

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Cory Bell on 5/31/2012.

The application has been amended as follows:

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PROPOSED EXAMINER'S AMENDMENT

1. (Currently Amended) A method of enabling a client to access content, the method comprising:

receiving, on a client, an instruction from a client application indicating a client request to access content;

accessing, by the client application and on the client, a list of content sources capable of rendering the content for which access is requested by the client;

requesting, using the client application on the client, identical portions of the content from each of the content sources in the list of the content sources;

measuring a first performance metric for a first content source of the content sources based on the identical portion received from the first content source;

measuring a second performance metric for a second content source of the content sources based on the identical portion received from the second content source;

determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources;

comparing the first performance metric and the second performance metric performance metrics for the content sources;

selecting, using the client application on the client, among the content sources based on the comparison of the performance metrics for the content sources to identify a content source to be accessed by the client; and

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rendering, using the client application on the client, the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source.

2. (Original) The method of claim 1 further comprising accessing the content source selected.

3. (Original) The method of claim 1 further comprising monitoring communications exchanged with the content source selected to determine a selected connection state to determine if an alternate content source should be accessed.

4. (Currently Amended) The method of claim 3 further comprising repeating the determining measuring and selecting when the selected connection state indicates that the alternate content source should be accessed.

5. (Original) The method of claim 3 further comprising monitoring the state of at least one of the content sources not selected from within the list of content sources so that the alternate content source may be selected when the connection state indicates the alternate content source should be accessed.

6. (Currently Amended) The method of claim 1 wherein receiving the list of content sources includes comprising receiving the list of content sources from a host.

7. (Original) The method of claim 6 wherein the list of content sources is received in response to authenticating.

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8. (Currently Amended) The method of claim 1 wherein determining measuring the first performance metric and the second performance metric comprises includes polling at least two of the content sources the first content source and the second content source with a polling request.

9. (Currently Amended) The method of claim 8 wherein polling at least two of the content sources includes a polling comprises transmitting a stream request to each of the content sources in the list of content sources.

10. (Currently Amended) The method of claim 8 wherein determining measuring the first performance metric and the second performance metric includes comprises identifying [a] the first content source with a response to the polling request that is received before a response to the polling request from the second content source other responses from other content sources included in the list of content sources.

11. (Currently Amended) The method of claim 1 wherein determining measuring the first performance metric includes comprises identifying that the [a] first content source is able to sustain an identified throughput rate.

12. (Currently Amended) The method of claim 11 wherein identifying that the first content source is able to sustain the identified throughput rate includes comprises identifying that the first content source is able to sustain the identified throughput rate for a specified duration.

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13. (Currently Amended) The method of claim 1 wherein determining measuring the first performance metric and the second performance metric comprises includes identifying the content source with a highest throughput rate.

14. (Currently Amended) The method of claim 1 wherein determining measuring the first performance metric and the second performance metric comprises includes ranking at least the first content source and the second content source two-of the content sources.

15. (Original) The method of claim 14 further comprising using the ranking to select a backup content source to be accessed when the content source selected for access experiences an interrupt condition.

16. (Original) The method of claim 14 further comprising maintaining a relative ranking among at least two of the content sources not selected by transmitting subsequent polling requests to the content sources not selected.

17. (Original) The method of claim 14 further comprising establishing and maintaining a connection to one or more of the content sources not selected from among the list while accessing the content source selected.

18. (Original) The method of claim 14 further comprising switching to one of the content sources not selected from the list when access to the content source selected is determined to be inferior to access available using the content source that is accessed.

19. (Currently Amended) A content access system comprising: a client with a processor that comprises:

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a content access code segment structured and arranged to receive an instruction from a client application indicating a client request to access content;

a source selection code segment structured and arranged to:

access, by the client application, a list of content sources capable of rendering the content for which access is requested by the client, and

request, using the client application on the client, identical portions of the content from each of the content sources in the list of the content sources;

a communications-interface measurement code segment structured and arranged to (i) measure a first performance metric for a first content source of the content sources based on the identical portion received from the first content source and (ii) measure a second performance metric for a second content source of the content sources based on the identical portion received from the second content source; determine, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources; and

a selection code segment structured and arranged to:

compare the first performance metric and the second performance metric the performance-metrics-for-the-content-sources;

select, using the client application on the client, among the content sources based on the comparison of the performance-metrics-for-the-content sources to identify a content source to be accessed by the client, and

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a rendering code segment structured and arranged to render, using the client application on the client, the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source.

20. (Original) The content access system of claim 19 further comprising a retrieval code segment structured and arranged to access the content source selected.

21. (Original) The content access system of claim 19 further comprising a first monitoring code segment structured and arranged to monitor communications exchanged with the content source selected to determine a selected connection state to determine if an alternate content source should be accessed.

22. (Currently Amended) The content access system of claim 21 further comprising a repeating code segment structured and arranged to repeat determining measuring and selecting operations when the selected connection state indicates that the alternate content source should be accessed.

23. (Original) The content access system of claim 21 further comprising a second monitoring code segment structured and arranged to monitor the state of at least one of the content sources not selected from within the list of content sources so that the alternate content source may be selected when the connection state indicates the alternate content source should be accessed.

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24. (Original) The content access system of claim 19 wherein the source selection code segment is structured and arranged to receive the list of content sources from a host.

25. (Previously Presented) The content access system of claim 24 wherein the source selection code segment is structured and arranged to receive the list of content sources in response to authenticating.

26. (Currently Amended) The content access system of claim 19 wherein the further comprising a communications interface [[is]] structured and arranged to transmit a polling request to at least two of the content sources in the list of content sources.

27. (Previously Presented) The content access system of claim 26 wherein the communications interface is structured and arranged to transmit a stream request to each of the content sources in the list of content sources.

28. (Currently Amended) The content access system of claim 26 wherein the communications-interface measurement code segment is structured and arranged to identify a first content source from the list of content sources whose with a response to a polling request [[that]] is received before other responses from other content sources included in the list of content sources.

29. (Currently Amended) The content access system of claim 19 wherein the communications-interface measurement code segment is structured and arranged to identify a first content source from the list of content sources able to sustain an identified throughput rate.

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30. (Currently Amended) The content access system of claim 29 wherein the communications-interface measurement code segment is structured and arranged to identify a first content source from the list of content sources able to sustain the identified throughput rate for a specified duration.

31. (Currently Amended) The content access system of claim 19 wherein the communications-interface measurement code segment is structured and arranged to identify [[the]] a content source from the list of content sources with a highest throughput rate.

32. (Currently Amended) The content access system of claim 19 wherein the communications-interface measurement code segment is structured and arranged to rank at least two of the content sources.

33. (Currently Amended) The content access system of claim 32 wherein the communications-interface measurement code segment is structured and arranged to use the ranking to select a backup content source to be accessed when the content source selected for access experiences an interrupt condition.

34. (Currently Amended) The content access system of claim 32 wherein the communications-interface measurement code segment is structured and arranged to maintain a relative ranking among at least two of the content sources not selected by transmitting subsequent polling requests to the content sources not selected.

35. (Original) The content access system of claim 32 wherein the communications interface is structured and arranged to maintain a connection to one or

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more of the content sources not selected from among the list while accessing the content source selected.

36. (Original) The content access system of claim 32 wherein the communications interface is structured and arranged to switch to one of the content sources not selected from the list when access to the content source selected is determined to be inferior to access available using the content source that is accessed.

37-45. (Cancelled)

2. The following is an examiner's statement of reasons for allowance: The measuring of two separate performance metrics, the comparison, and the selection of the content source based on the performance metric is not taught or suggested by the prior art. The measurement of the performance metric is interpreted from the specification as being limited to polling (spec p 8, lines 10-22), throughput measurements (spec page 9 line 30 – page 10 line 16) and utilization including network and/or processor utilization (page 10, line 17 - page 11, line 21).

3. Newly cited reference Bornstein et al. (US 2002/0163882 A1 and US 7,274,658) is very similar to Applicant's invention. In [0014] and col. 3 lines 9-24, Bornstein has a file download "race" between a source and a target edge server to see which route is the fastest, with the "winning path" used for transfers for a given time period. However, Bornstein failed to disclose "accessing a list of content sources", or "rendering...the identical portion of the accessed content and a subsequent portion of content...". Similar issues are found in Jain et al. (US 6,795,858)

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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